

REMARKS

Claims 1, 3 to 9, 11 to 34, 36 to 42 and 44 to 64 remain pending in the application, of which Claims 1, 6, 9, 14, 17 to 19, 26, 34, 39, 42, 47, 50 and 57 are independent. Reconsideration and further examination are respectfully requested.

Claims 1 to 9, 11 to 34, 36 to 42 and 44 to 64 were rejected 35 U.S.C. § 102(e) as allegedly being anticipated by Claims 37 to 100 of U.S. Publication No. 2003/0128861 (Rhoads). The rejections are traversed.

In this regard, as Applicant pointed out to the Examiner in their previous response, the subject matter of Rhoads on which the rejections are based is simply not prior art to the subject application because it is new matter which was added to Rhoads when the application on which the publication is based was filed. Accordingly, that subject matter is not entitled to any filing date earlier than October 18, 2002. Applicant pointed out the foregoing to the Examiner in their previous response, but the Examiner failed to provide sufficient evidence to support a finding that the subject matter of Rhoads (specifically, claims 37 to 100 therein) is in fact entitled to any of the claimed § 120 priority dates.

More specifically, the Examiner merely alleged in the present Office Action that the Rhoads reference itself is prior art to the subject application because it claims priority under 35 U.S.C. § 120 to an earlier filed provisional application. However, merely claiming benefit under § 120 to an earlier filed application is not enough to establish an earlier priority date for all of the subject matter disclosed therein. Rather, as correctly summarized at MPEP § 706.02(V)(B):

If the application is a continuation-in-part of an earlier filed U.S. application or international application, any claims in the new application not supported by the specification and claims of the parent application have an effective filing date equal to the filing date of the new application. Any claims which are fully supported under 35 U.S.C. 112 by the earlier parent application have the

effective filing date of that earlier parent application. (emphasis added)

In the present case, as Applicant pointed out to the Examiner in the previous response, Claims 37 to 100 of Rhoads are not supported by any of the parent applications for which Rhoads claims a benefit under § 120. Accordingly, the subject matter of Claims 37 to 100 has an effective filing date of October 18, 2002, which post dates the filing date of the present application.

Although Applicant pointed out the foregoing to the Examiner in the previous traversal, the Examiner failed to overcome these arguments by identifying which of the priority applications actually supports an earlier effective filing date for the subject matter of Claims 37 to 100. Instead, the Examiner merely cited to an earlier filed provisional application (60/082,228) as forming the basis for the § 120 priority date. However, Applicant has obtained a copy of that provisional application (a copy of which is attached hereto for the Examiner's reference), and as can clearly be seen by a plain reading of that provisional application, it fails to disclose anything which would, or even possibly could, provide § 112 support for the subject matter of Claims 37 to 100 of Rhoads so that an earlier filing date under § 120 could be granted to Claims 37 to 100. Accordingly, the rejections are traversed on the same grounds as in the previous response, and therefore, the Examiner is requested to withdraw the rejections, withdraw the finality of the present Office Action, and to either pass the application to allowance or to issue a new non-final action on the merits.

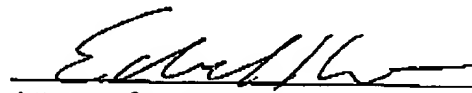
In the event that the Examiner maintains that Claims 37 to 100 are entitled to an earlier filing date under § 120, he is requested to meet his burden of pointing out

precisely which of the claimed priority applications provides the necessary § 112 support, and where precisely that support can be found in that reference.

No other matters having been raised, the entire application is believed to be in condition for allowance and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,


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